IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

~~Misc.~~ No. 356

JOSEPH FERNANDEZ,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

JOSEPH HERNANDEZ
Petitioner

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To the Honorable, The Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

The petitioner herein prays for rehearing of his petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit. His petition was denied on December 9, 1963.

There are intervening circumstances of substantial effect and other substantial grounds available to petitioner although not previously presented which warrant favorable consideration of his petition for rehearing.

The petition herein (pp. 3-4) set forth the case against petitioner. The government brief did not dispute such facts (p. 24 its brief).

Therefore, on the unchallenged facts, the petition should have been granted.

So cursory is the government case that it may be outlined again without burden.

On an occasion petitioner turned over to Smith, a government agent, an attache case containing two cellophane bags of white powder. The government never contended that this evidence involved petitioner in the conspiracy. Indeed, in the court below, it conceded this to be insufficient evidence.

In 1958, petitioner told an alleged conspirator that he was wanted by another alleged conspirator. Below, the government again conceded insufficiency. In this Court, it merely alludes to the incident without concession.

The third shred of evidence relating to a discussion of a plan, never effectuated, pertaining to going into the narcotics business. Petitioner did not participate, but was present. Below, the government urged that this proved petitioner's participation. Here, that argument is eschewed, but the government now adds a new argument—that petitioner was with an alleged conspirator at various times—and that his "course of conduct was such that the jury could reasonably conclude that he was a knowing member of the ring."

However, his course of conduct, indeed, the entire case against petitioner, has been set forth. It is a case of innuendo, of inference piled upon inference, without any residuum of competent legal evidence to contaminate petitioner as a conspirator.

Petitioner recognizes that rehearing is not customarily granted, but urges, with all possible emphasis and sincerity, that not only upon the petition herein, but upon the brief of the government, the petition should be granted.

Guilt by association is a discarded relic of an era of hysteria, and it is urged, sincerely and respectfully, that that is all that was shown. The established facts were insufficient to have warranted submission for jury consideration.

CONCLUSION

For the reasons aforesaid, rehearing of the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit should be granted, and a writ of certiorari issue.

All of which is respectfully submitted.

New York, December 24, 1963.

JOSEPH HERNANDEZ
Petitioner

NATHAN KESTNBAUM
Counsel for Petitioner
110 East 42nd Street
New York, N. Y. 10017

Certificate

I, NATHAN KESTNBAUM, counsel for petitioner, do hereby certify that this petition for rehearing is presented in good faith and not for delay, and do further certify that this petition is restricted to grounds which are confined to intervening circumstances of substantial effect and other substantial grounds available to petitioner although not previously presented which warrant favorable consideration.

New York, December 24, 1963.

NATHAN KESTNBAUM